In the United States Court of Federal Claims

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RALPH L. FULLER, *pro se*,	*	
Plaintiff,	*	
v.	*	No. 06-528C
THE UNITED STATES,	*	(Filed Jan. 4, 2007)
Defendant.	*	

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MEMORANDUM OPINION AND ORDER

This case is before the court following briefing regarding Defendant's Motion To Dismiss or, in the Alternative, for Summary Judgment. Plaintiff filed his complaint on July 19, 2006, alleging that a purchase made on a U.S. Marshals Service website resulted in a breach of contract by the Government. Plaintiff alleges that he "purchased fifteen [15] sets of cultured black pearls . . . on August 29, 2003 at public auction on the U.S. Marshals web site at the alleged value of five thousand dollars [$5,000.00] per set and received fifteen [15] sets of plastic made in China from Sam Camas Premier Trends." Compl. filed Jul. 19, 2006, ¶ 1. Defendant asserts that plaintiff's claims are not subject to the jurisdiction of the United States Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491(a)(1) (2000).

BACKGROUND

Plaintiff filed his complaint on July 19, 2006, accompanied by an Application To Proceed *in Forma Pauperis*, which was granted by the court on November 16, 2006. See Order entered Nov. 16, 2006 at 1. Defendant's dispositive motion was filed on October 12, 2006, to which plaintiff responded on October 26, 2006. On November 16, 2006, the court ordered the parties to supplement the record with additional evidence concerning plaintiff's allegations of the authority of the Deputy U.S. Marshal with whom he allegedly dealt by November 28, 2006. See Order entered Nov. 16, 2006, ¶¶ 1-2.

FACTS

Ralph A. Fuller ("plaintiff") alleges that he purchased fifteen sets of pearls on the bid4assets.com website from Sam Camas Premier Trends ("Sam Camas") on August 29, 2003. Prior to purchasing the pearls, plaintiff allegedly contacted Ronald R. Donelson, who held the position of Operational and Warrants Supervisory Deputy U.S. Marshal for the Western District of Virginia at

that time. 1/ Plaintiff asserts that he inquired as to the status of Sam Camas and was informed by Mr. Donelson that "buying from Sam Camas was the same as buying from the U.S. Marshal's service." Compl. ¶ 2. Plaintiff requests relief in the form of "seventy five thousand dollars [$75,000.00] the alleged value of the pearls and one hundred seventy five thousand dollars [$175,000.00] for filing fees, legal fees, punitive damages and reparation[s]." Compl. ¶ 7.

DISCUSSION

1. Standard of review

Complaints filed by *pro se* litigants are held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). A court should be "receptive to *pro se* plaintiffs and assist them." Demes v. United States, 52 Fed. Cl. 365, 369 (2002); see Ruderer v. United States, 412 F.2d 1285, 1292 (Ct. Cl. 1969).

Pro se litigants are granted the greatest latitude regarding motions to dismiss for failure to state a claim upon which relief can be granted. Courts have "strained [their] proper role in adversary proceedings to the limit, searching [the record] to see if plaintiff has a cause of action somewhere displayed." Ruderer, 412 F.2d at 1292. Nevertheless, while "[t]he fact that [a plaintiff] acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be." Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Although plaintiff is given some leniency in presenting his case, his *pro se* status does not render him immune from pleading facts upon which a valid claim can rest. See, e.g., Ledford v. United States, 297 F.3d 1378, 1382 (Fed. Cir. 2002) (affirming dismissal of *pro se* plaintiff's complaint which sought, *inter alia*, a tax refund); Constant v. United States, 929 F.2d 654, 658 (Fed. Cir. 1991) (sanctioning *pro se* plaintiff for filing frivolous appeal). As this court stated in Demes "[w]hile a court should be receptive to *pro se* plaintiffs and assist them, justice is ill-served when a jurist crosses the line from a finder of fact to advocate." 52 Fed. Cl. at 369.

By contrast, *pro se* status grants less leeway when it comes to meeting jurisdictional requirements. Bernard v. United States, 59 Fed. Cl. 497, 499 (2004) (holding that latitude afforded to *pro se* plaintiffs "does not relieve a *pro se* plaintiff from meeting jurisdictional requirements"), aff'd, 98 Fed. Appx. 860 (Fed. Cir. 2004) (unpubl. table); see also Ledford v. United States, 297 F.3d 1378, 1382 (Fed. Cir. 2002) (affirming dismissal of *pro se* plaintiff's complaint seeking unpaid tax refund). This is certainly the case when plaintiff attempts to invoke the jurisdiction of the Court of Federal Claims, for the Tucker Act "confers jurisdiction upon the Court of Federal Claims over the specified categories of actions brought against the United States, and . . . waives the Government's sovereign immunity for those actions." Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). Consequently, the Tucker Act must be strictly construed in favor of the Government. See Dep't of the Army v. Blue Fox, Inc., 525 U.S. 255, 261 (1999); Shoshone Indian

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1/ Plaintiff's complaint mistakenly references a "Mr. Ron Donaldson," rather than Mr. Donelson.

Tribe v. United States, 364 F.3d 1339, 1346 (Fed. Cir. 2004). As the requirements of subject matter jurisdiction are so "exacting[,] . . . . [a] party's failure or inability to procure counsel therefore does not alter who carries the burden nor how that burden is met." Carter v. United States, 62 Fed. Cl. 66, 69 (2004).

2. Subject matter jurisdiction

Defendant moves to dismiss plaintiff's complaint under RCFC 12(b)(1) for lack of subject matter jurisdiction. When a federal court hears such a jurisdictional challenge, "its task is necessarily a limited one." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Id. The court must accept as true the facts alleged in the complaint, and must construe such facts in the light most favorable to the pleader. See Henke, 60 F.3d at 797 (holding that courts are obligated "to draw all reasonable inferences in plaintiff's favor"); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 747 (Fed. Cir. 1988). Nevertheless, if the jurisdictional facts alleged in the complaint are disputed, "the . . . court may consider relevant evidence in order to resolve the factual dispute." Reynolds, 846 F.2d at 747; Moyer v. United States, 190 F.3d 1314, 1318 (Fed. Cir. 1999) (holding that "[f]act-finding is proper when considering a motion to dismiss where the jurisdictional facts in the complaint . . . are challenged"). Once the court's subject matter jurisdiction is put into question, it is "incumbent upon [the plaintiff] to come forward with evidence establishing the court's jurisdiction. [The plaintiff] bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence." Reynolds, 846 F.2d at 748; McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936) (holding that "[i]f [plaintiff's] allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof").

3. Failure to comply with the November 16 Order

The court ordered supplementation of the record on November 16, 2006, requiring plaintiff to "supplement the record by sending, under cover of his sworn declaration before a notary public, the original wrapping that he describes in ¶ 4 of his Statement of Facts." See Order entered Nov. 16, 2006, ¶ 2. Plaintiff responded on November 27, 2006, by providing a notarized Statement that read: "The plaintiff, Ralph L. Fuller Supplements his petition by a sworn declaration before a notary public that the original statement as described in paragraph 4 of his petition is true." Plaintiff did not provide the original wrapping as required by the language of the November 16 Order and thus has not substantiated his allegation that the pearls were sent under the auspices of a U.S. Marshals website or web address. This is an important showing relative to plaintiff's establishing that he contracted with the United States.

RCFC 41(b) provides: "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, the court may dismiss on its own motion." Pursuant to RCFC 41(b), plaintiff's claim is dismissed for failure to comply with the requirements of the November 16, 2006 Order.

4. Plaintiff's complaint

RCFC 9(h) sets forth the heightened pleading standards for certain types of complaints in the United States Court of Federal Claims:

> If the claim is founded upon a contract or treaty with the United States, a description of the contract or treaty sufficient to identify it. In addition, the plaintiff shall plead the substance of those portions of the contract or treaty on which the plaintiff relies or shall annex to the complaint a copy of the contract or treaty, indicating the provisions thereof on which the plaintiff relies.

Id. Defendant argues that plaintiff's complaint fails to meet the requirements of RCFC 9(h) by failing to (1) provide a description of the contract; (2) provide the substance of the contract on which the plaintiff relies; and (3) attach a copy of the contract.

Plaintiff's complaint contained a printout of the bid4assets.com website, dated June 4, 2004, as Exhibit A. This document does list "U.S. Marshals Service" under the "SPECIALTY CHANNELS" categories, but it does not set forth any of the requisite elements of RCFC 9(h). Id. No description of the contract, no substance of the actual contract which plaintiff relies upon, and no copy of the contract is contained within plaintiff's complaint. As defendant has noted, plaintiff has not provided an auction identification number or confirmation number to enable identification of the relevant transaction. Even if one were to assume plaintiff's supplemental briefing was not deficient, plaintiff fails to meet his burden of proof concerning the requirements of RCFC 9(h), and his complaint therefore is subject to dismissal.

Defendant views these failures as jurisdictional defects, but plaintiff arguably has plead contractual relief within the contemplation of the Tucker Act. See Fisher, 402 F.3d 1167.

5. Failure to plead authorized agent

The United States Court of Appeals for the Federal Circuit has held that an implied-in-fact contract with the United States requires findings of: (1) mutuality of intent to contract; (2) consideration; (3) lack of ambiguity in offer and acceptance; and (4) a Government representative who has actual authority to bind the Government in contract. Lewis v. United States, 70 F.3d 597, 600 (Fed. Cir. 1995); see also City of El Centro v. United States, 922 F.2d 816, 820 (Fed. Cir. 1990). "It is well established that a purported agreement with the United States is not binding unless the other party can show that the official with whom the agreement was made had authority to bind the Government." S.E.R., Jobs for Progress, Inc. v. United States, 759 F.2d 1, 4 (Fed. Cir. 1985); see also City of Alexandria v. United States, 737 F.2d 1022, 1027 (Fed. Cir. 1984); Edison Sault Elec. Co. v. United States, 552 F.2d 326, 333 (Ct. Cl. 1977) ("For the United States to be liable for acts of a third party, the third party must, at the least, be an 'agency or instrumentality of the United States acting within the scope of its authority . . . .'" (quoting Porter v. United States, 426 F.2d 583, 587 (Ct. Cl. 1974)).

Defendant argues that plaintiff has not alleged facts that would demonstrate that Sam Camas was in privity with, an agency of, or an instrumentality of the United States. 48 C.F.R. § 1.601(a) (2006) provides that "[c]ontracts may be entered into and signed on behalf of the Government only by contracting officers," and 48 C.F.R. § 1.603-3(a) (2006) provides that "[c]ontracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment." Defendant submitted declarations from (1) Lisa R. Black, Program Manager of the National Jewelry, Arts, Antiques and Collectibles Program of the U.S. Marshals Service; (2) Karen B. Wolford, Supervisory Property Management Specialist for the U.S. Marshals Service for the District of Maryland; and (3) Anne Q. Webb, Administrative Officer for the U.S. Marshals Service in the Western District of Virginia that support defendant's contention that Sam Camas was not an authorized agent of the Government and was not appointed in writing as a contracting officer. Decl. of Lisa R. Black, Oct. 6, 2006, ¶ 7 ("According to the official records . . . and my personal knowledge, the U.S. Marshals Service did not sell cultured black pearls to the plaintiff in this case."); Decl. of Karen B. Wolford, Oct. 6, 2006, ¶ 3; Decl. of Anne Q. Webb, Oct. 5, 2006, ¶ 2.

Plaintiff contends that his discussion with Mr. Donelson prior to his purchase supports his allegation that Sam Camas was an authorized agent of the Government and had authority to bind the defendant in contract. See Compl. ¶ 2. Contrary to plaintiff's allegations, however, defendant has provided supplemental declarations from Mr. Donelson and his superior officer, G. Wayne Pike, United States Marshal for the Western District of Virginia, that (1) deny Mr. Donelson had the authority to make such a statement; and (2) deny plaintiff's allegations that Mr. Donelson had advised plaintiff that Sam Camas was an agent of the U.S. Marshals Service. Decl. of G. Wayne Pike, Nov. 27, 2006, ¶ 2; Decl. of Ronald R. Donelson, Nov. 27, 2006, ¶ 7. Plaintiff, on the other hand, has failed to provide any evidence which supports his version of the conversation with Mr. Donelson and has therefore failed to meet his burden of proof regarding an agreement with an authorized agent of the United States.

Accordingly, based on the foregoing, the Clerk of the Court shall dismiss the complaint with prejudice pursuant to RCFC 41(b) for failure to comply with the court's order of November 16, 2006; alternatively, defendant is entitled to judgment on the merits for failure to plead the elements of an implied-in-fact contract.

IT IS SO ORDERED.

No Costs.

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Christine Odell Cook Miller
Judge